

applicants, including Beer applied for the subject examination. It is noted that Beer was not found eligible for the subject examination.¹ The resulting eligible list of 17 names promulgated on August 10, 2017 and expires August 9, 2020. On August 28, 2017 a certification containing all 17 names was issued to the appointing authority. Thereafter, the appointing authority requested an appointment waiver, asserting that Beer was no longer serving provisionally in the subject title.² In *In the Matter of Administrative Clerk (M260V), Lakewood Fire District #1* (CSC, decided April 4, 2018), the Civil Service Commission (Commission) granted the appointment waiver and ordered that no selection costs be presently assessed as the appointing authority asserted that it may utilize the subject eligible list in the future.

In a March 4, 2018 letter, the Chief of Staff, Civil Service Commission, reiterated that all positions in the Lakewood Fire District were properly recorded. Specifically, it noted that agency staff visited the appointing authority and “assisted with updating of employee records, including Yehuda Beer.” It also noted the appointing authority’s request to create the title of Deputy Fire District Administrator and place it in the unclassified service was currently under review.

In its April 4, 2018 appeal, the CCFP argues that Beer did not meet the requirements for his provisional appointment of Administrative Clerk. Moreover, it asserts that the appointing authority has engaged in a pattern of conduct to evade Civil Service law and rules. Specifically, it notes that Beer was placed in several provisional titles, and that upon failing the examination for the title of Administrative Clerk, Beer was “appointed” to a newly-created non-existent title of Deputy Fire District Administrator. In this regard, the CCFP notes that in a February 12, 2018 resolution, the Lakewood Board of Fire Commissioners for Fire District No. 1 (Fire Commissioners) indicates that it has requested that this agency create the title of Deputy Fire District Administrator and place it in the unclassified division. CCFP argues that this request should be denied due to the appointing authority’s continued attempts to circumvent Civil Service law in order to appoint Beer by creating an unclassified title for him. Therefore, the CCFP requests that that the title of Deputy Fire District Administrator not be allowed and that Beer be removed from his position.³

In response the appointing authority, represented by Jay C. Sendzik, Esq., asserts that in March 2016, the Fire Commissioners reviewed the mission and management of the fire district, and it determined to seek new legal counsel and redesign how the fire district was administered. It maintains that, at that time, the

¹ Beer appealed the determination that he was ineligible for the subject examination. However, the matter was closed as it was determined that he did not possess the required five years of experience in clerical work.

² Agency records reveal that Beer was appointed to the non-competitive title of Clerk 1, effective November 3, 2017.

³ The matter of the Deputy Fire District Administrator title was decided in *In the Matter of Deputy Fire District Administrator* (CSC, decided September 20, 2018).

administrator of the fire district was in the title of Business Manager⁴ and had been appointed by prior Fire Commissioners. Therefore, it decided to “replace that individual with a Fire District Administrator.” It asserts that it took the necessary steps to create the title pursuant to Title 40A and it sought applications for the position. As a result, it “provisionally” appointed Beer to the title of Fire District Administrator. However, it later appointed Vincent Vitiello, Jr., effective October 3, 2016, to the unclassified title of Fire District Administrator. The appointing authority argues that although Vitiello was “strongly experienced in the fire service and management areas,” he had no familiarity with the Lakewood Fire Department and thus it created the position of Administrative Clerk and provisionally appointed Beer to that position.

The appointing authority argues that it met with representatives of this agency on January 4, 2017, and that as a result, this agency “was fully aware of . . . [it’s] position and future goals.” Pending the results of the test for Administrative Clerk, and after Beer was deemed ineligible for that examination, the appointing authority met again with representatives of this agency to “update them on the necessity of creating the position of Deputy Fire District Administrator.” Moreover, it asserts that “on the advice of counsel and civil service representatives” the Fire Commissioners created the position of clerk and Beer was appointed to the non-competitive title of Clerk 1, effective November 3, 2017. Thereafter, also “on the advice of legal counsel and civil service representatives,” it created the tentative position of Deputy Fire District Administrator and provisionally made two appointments to that title, one of whom was Beer. It argues that those appointments were made after conducting a search and interview process.

Additionally, the appointing authority provides a Position Classification Questionnaire (PCQ) for Beer. A review of the PCQ reveals that Beer’s position does not supervise any employees. It also lists his duties as follows: 25% of his time is spent on procurement and inventory duties; 10% on personnel management; 10%

⁴ Agency records indicate that Raymond Blaszak was provisionally appointed, pending open-competitive examination procedures, to the title of Business Manager, effective May 1, 2013. As a result of the provisional appointment, an open-competitive examination (M0653T) was announced for the title of Business Manager with a closing date of September 10, 2015. Five eligibles, including Blaszak were admitted to the examination which was processed as a qualifying examination *i.e.*, applicants who met the announced requirements were given the same score, except that veterans were ranked first. The resulting eligible list promulgated on March 24, 2016 and expired on March 23, 2018. A certification containing all five names was issued to the appointing authority on April 6, 2016. The appointing authority returned the certification and requested an appointment waiver, as Blaszak was no longer serving provisionally in the subject title. Agency records indicate that the appointing authority submitted a separation form on January 4, 2017, to the County and Municipal Personnel System (CAMPS) indicating that Blaszak’s employment was terminated effective April 11, 2016. It later changed the effective date to March 16, 2016. In *In the Matter of Business Manager (M0653T), Lakewood Fire District* (CSC, decided November 15, 2017) the Commission granted the request for an appointment waiver and ordered the assessment of selection costs in the amount of \$2,048.

on information technology; 30% on administration policies and procedures; 20% on facilities and equipment management; and 5% on interlocal project management. Additionally, it submits minutes and resolutions from the Fire Commissioners' meetings in August 2016, September 2016, November 2016, March 2017, April 2017, October 2017, December 2017 and March 2018 which reference, in relevant part, the creation of the title Administrative Clerk and Clerk and the appointment of Beer to those titles, as well as the creation of the title of Deputy Fire District Administrator and the advertisement of said position. For example, the December 11, 2017 minutes note that a motion to continue the employment of Beer in the position of clerk under the same terms and conditions, was approved. In December 2017, Resolution No. 2018-03-12-05 reaffirmed the appointment of Beer as a provisional Administrative Clerk under the same terms and conditions as his initial employment.

CONCLUSION

The proposed job specification for the title of Deputy Fire District Administrator provides that an individual in that title, under the direction of the Fire District Administrator, assists in planning, organizing, and managing the administrative and fiscal functions within a fire district; does other related work as required.

With regard to CCFP's arguments concerning Beer, the Commission notes that the appointing authority's actions, at least arguably, appear to be attempts to circumvent Civil Service law and rules. Specifically, the Commission is troubled by the appointing authority moving Beer from title to title, with little to no apparent change to his duties. In this regard, the December 11, 2017 minutes note that a motion to continue the employment of Beer, who had previously been appointed to the title of Administrative Clerk, in the position of clerk under the same terms and conditions, was approved. Moreover, also in December 2017, Resolution No. 2018-03-12-05 reaffirmed the appointment of Beer as a provisional Administrative Clerk under the same terms and conditions as his initial employment. However, a review of the PCQ provided by the appointing authority does not reveal that Beer performs duties appropriate to the title of Clerk 1 or Administrative Clerk. In this regard, the job specification for the title of Clerk 1 reveals that an individual in that title performs routine, repetitive clerical work involving the processing of documents in a variety of functions; does related work as required. The job specification for the title of Administrative Clerk reveals that an individual in that title assists an administrative official of a department or autonomous government agency at a level no lower than department head, by doing administrative clerical and related work, usually varied and involving some elements of trouble shooting; or, under the immediate direction of an administrative official at a level no lower than department head, supervises the office and other clerical and related operations of a department or autonomous agency; does related work as required. Yet the PCQ

indicates that Beer's duties are as follows: 25% of his time is spent on procurement and inventory duties; 10% on personnel management; 10% on information technology; 30% on administration policies and procedures; 20% on facilities and equipment management; and 5% on interlocal project management. As the majority of his duties are not clerical in nature, neither the Clerk 1 title nor the Administrative Clerk titles are appropriate for his position. Regardless, as the duties listed on the PCQ appear to fall within those performed by the title of Deputy Fire District Administrator established in *Deputy Fire District Administrator, supra*, unless the appointing authority does not appoint him to that title, no further action is required.

With regard to CCFP's request to not create or allocate the Deputy Fire District Administrator title to the unclassified service, the Commission notes that as indicated in *Deputy Fire District Administrator, supra*, the request to create the subject unclassified title met the requirements of *N.J.A.C. 4A:3-1.3*. Therefore, there is no basis to grant CCFP's request.

Finally, the appointing authority is cautioned in the future to strictly follow the provisions of Title 11A of the New Jersey Statutes and Title 4A of the New Jersey Administrative Code in its personnel transactions. Any further irregularities that are uncovered may subject it to fines or other penalties pursuant to *N.J.A.C. 4A:10-2.1*.

ORDER

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 20TH DAY OF SEPTEMBER, 2018



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